AUG 17 2001

(13)

Supreme Court, U.S.
FILED
AUG 17 2001
OFFICE OF THE CLERK

No. 00-799

In The

Supreme Court of the United States

THE CITY OF LOS ANGELES,

Petitioner,

v.

ALAMEDA BOOKS, INC. and
HIGHLAND BOOKS, INC.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENTS' APPENDIX

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[1] Portions of this Declaration were included in the Joint Appendix. However, the excerpts included here are more complete.

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

ALAMEDA BOOKS, INC., a California Corporation; *et al.*,

Plaintiffs,

v.

CITY OF LOS ANGELES, a municipal corporation,

Defendant.

Case No. CV 95-7771 DDP (CTx)

DECLARATION OF G. RANDALL GARROU IN SUPPORT OF PLAINTIFFS' MOTIONS FOR SUMMARY JUDGMENT

Hearing:

Date: August 25, 1997
Time: 10:00 a.m.
Ctrm: 24

DECLARATION OF G. RANDALL GARROU

(28 U.S.C. § 1746)

(Filed July 1, 1997)

I, G. Randall Garrou, hereby declare:

1. The following statements are true of my own personal knowledge. If called upon, I could and would testify to the following.

[NOTE: ¶¶ 2-27 are omitted; ¶¶ 2-13 can be found in the Joint Appendix at J.A. 240-244.]

* * *

VAGUENESS

28. I have personally dealt with City zoning officials in connection with at least five different combination adult bookstores/adult arcades wherein my clients had actually attempted to convert either the retail sales portion of their store or the video viewing booth portion of their store to a "nonadult" activity. I also was involved in discussions with city zoning officials regarding another client's request for information as to how to go about such a conversion. These six interactions involved the following stores and related administrative proceedings:

(1) New Wave Inc.'s business at 6452 Lankershim Blvd. (Administrative appeal from the denial of an extension from compliance with the adult zoning ordinance where the denial was based upon the theory that New Wave's store constituted an unlawful nonconforming use by virtue of the presence of both an "adult bookstore" and an "adult arcade" – New Wave had attempted to operate both of those aspects of its business in a "non-adult" manner. Zoning Administrator No. ZA 88-0266(AE); Board of Zoning Appeals Case No. 3810; City Council Appeal No. 89-0044).

(2) E.W.A.P. Inc.'s business at 12323 Ventura Blvd. (Administrative appeal from denial of an extension application – City characterized business as constituting two distinct "adult" entertainment businesses, i.e., an "adult bookstore" and an "adult arcade", even though E.W.A.P., INC. had attempted to operate its video viewing booths to show a majority of non-adult entertainment films – Zoning Administrator No. ZA 88-0149(AE); Board of Zoning Appeals Case No. 3835; City Council File No. 88-2039.)

(3) Stuart Parr's business at 6408 Tujunga Ave. (Administrative appeal from the denial of extension application – City characterized business as constituting two distinct "adult" businesses, i.e., an "adult bookstore" and an "adult arcade", even though a preponderence of the inventory was nonadult. This ruling was rendered in Zoning Administrator Case No. ZA 88-0265 (AE) and was affirmed on appeal by the Board of Zoning Appeals in BZA Case No. 3807 and then by the City Council in Council File No. 89-2666.)

(4) Topanga Press, Inc.'s business at 7566 Melrose Ave. (Administrative appeal from an order to comply charging it as unlawfully operating an "adult bookstore" within 500 feet of a residential zone even

though over two thirds of its inventory was non-adult. Affirmed on appeal in Zoning Administrator Case No. ZA 88-1054(A), and again in Board of Zoning Appeals Case No. B.Z.A. 3932.)

(5) Brand X Video, Inc.'s business at 6161 Van Nuys Blvd. (Informal, but frequent telephonic discussions with Building & Safety official John Mepham (and one with Mr. Harold Lambert) inquiring as to how to go about converting Brand X to a "non-adult" bookstore, after issuance of an Order To Comply.)

(6) In Hand Book & Video, located at 5648 Vineland Ave. (I represented In Hand at a City Attorney Hearing on September 12, 1988, attended by City Attorney Hearing Officer Robin Weinstein and two Building & Safety officials, including Senior Building & Safety Supervisor Ron Black. The City rejected In Hand's attempt to convert to a "non-adult" bookstore and refused to give any objective or measurable guidelines for compliance.)

29. Although all six of these stores either attempted to, or expressed a desire to, follow the clear guidelines then established by the California Courts of Appeal in *Pringle v. City of Covina*, 115 Cal.App.3d 151, 171 Cal.Rptr. 251 (1981) and *Kuhns v. Santa Cruz County Board of Supervisors*, 128 Cal.App.3d 369, 181 Cal.Rptr. 1 (1982) for achieving "non-adult" status (i.e., they complied with the then-applicable "preponderance test"), in not one of the six locations did the City acquiesce in the constructions mandated by those Court of Appeal opinions. Moreover,

in each of these six proceedings, I implored city officials to explain what specific tests or criteria they were using in rendering their determination that a particular use was an "adult" use. Although all but one of these stores' legal positions were determined in formal administrative proceedings, (three of which involved fully exhausted administrative appeals), unfortunately, in not one of the proceedings with which I was involved did *any* of the City officials *ever* give *any* objective guidelines or criteria which I could communicate to my clients for how to go about complying with the ordinance while continuing to maintain the maximum allowable amount of adult materials. In virtually every proceeding, the City officials candidly admitted that it was a completely subjective test and it depended upon whether the particular location struck the particular City zoning inspector as an "adult bookstore" or "adult arcade" based on nothing but that zoning inspector's personal opinions.

30. Obviously, there was no way I could provide any objective guidelines upon which my clients could rely for this conversion process.

31. The attempt made by Drake's bookstore (operated by Topanga Press, Inc.) is instructive of the problems my clients faced in converting into "non-adult" businesses. Indeed, the proceedings in many of the other administrative appeals with which I was involved were delayed in order to see what test, if any, would evolve from the *Drake's* case.

32. Although Drake's had converted over two-thirds of its inventory to "nonadult" materials, and had entirely eliminated *all* of its video viewing booths, the

City still insisted on characterizing it as an "adult bookstore," and repeatedly declined the requests both of my clients and of our office for any type of guidelines which Drake's could follow in order to achieve compliance as a "non-adult" store. These requests were made both orally and formally in writing.

33. I personally handled Topanga Press' administrative appeal from an Order To Comply which issued on July 8, 1988, asserting that it was operating an "adult bookstore" unlawfully within 500 feet of a residential zone. Our defense was solely that Drake's was not in fact an "adult bookstore", given that over 2/3 of its inventory was "non-adult". After unsuccessfully appealing an Order To Comply to the Chief Zoning Administrator, I thereafter presented Topanga Press' appeal to the Los Angeles Board of Zoning Appeals, the final agency entitled by law to rule upon their appeal. Unfortunately, only four of the five Board members were present for the hearing on that appeal. At the conclusion of all the evidence, the two Board members who were lawyers agreed with me that Drake's had completely complied with all of the then-existing tests set forth both by the ordinance and by case law and voted to reverse the Order To Comply. However, the two nonlawyer members voted to deny Drake's appeal and, as a result, the Order To Comply was upheld by a split vote of the Board of Zoning Appeals.

34. Once again, neither the Chief Zoning Administrator nor the Board of Zoning Appeals issued any objective tests by which Topanga Press (or anyone else) could attempt to achieve compliance in the future as a "non-adult" bookstore containing some lesser amount of adult entertainment materials.

35. As lead counsel in the *Topanga Press* litigation, I was present at the depositions of the following three Los Angeles city officials: (1) John Mepham, a building inspector for the Los Angeles Department of Building and Safety in 1990; (2) James Carney, the Chief Inspector for the Commercial Division of the Bureau of Community Safety for the Los Angeles Department of Building and Safety in 1990; and (3) Franklin Eberhard, the Chief Zoning Administrator of the City of Los Angeles in 1990, all of which were taken in January of 1990. True copies of the cover page, court reporter's certification page and relevant interior pages of their deposition transcripts are attached as Exhibits A, B and C respectively hereto.

36. At those depositions, none of the above city officials was able to articulate a single, standardized, objective, or consistent administrative interpretation of the meaning of the term "adult bookstore" as it appears and is used in L.A.M.C. § 12.70B-2.

37. Based upon my foregoing experiences, it is my opinion that the plaintiffs in this lawsuit cannot safely make any attempt to carry the maximum amount of legally permissible adult inventory at their stores which would still allow them to be characterized as a "non-adult" bookstore. It is further my opinion that the City's pattern of enforcement of its "adult bookstore" definition is entirely arbitrary and is totally dependent upon the personal predilections of the relevant building and safety inspector, zoning administrator, police officer, or judge reviewing the facts in a particular case.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 30th day of June, 1997, within the United States of America.

/s/ G. Randall Garrou
G. RANDALL GARROU

SELECTED EXCERPTS FROM EXHIBIT "A" TO GARROU DECLARATION CONSISTING OF COVER PAGE AND COURT REPORTER CERTIFICATION PAGE AND RELEVANT INTERIOR PAGES OF THE DEPOSITION OF JOHN ROGER MEPHAM TAKEN ON JANUARY 12, 1990 IN *TOPANGA PRESS V. THE CITY OF LOS ANGELES*, USDC CD CAL CASE NO. CV-88-7838 RG

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TOPANGA PRESS, INC., Plaintiff, vs. CITY OF LOS ANGELES, etc., et al., Defendants.	)	Case No. CV-88-7838 RG (Kx)

DEPOSITION OF JOHN ROGER MEPHAM

Beverly Hills, California
January 12, 1990

LACEY
Shorthand Reporting Corporation
CERTIFIED DEPOSITION NOTARIES
695 S. HARVARD BOULEVARD
LOS ANGELES, CALIFORNIA 90005
Telephone (213) 386-1108 – (714) 978-6046

REPORTED BY: Cheryle Lewis, C.S.R. No. 6312
OUR FILE NO. 5347

* * *

[p. 90] * * *

Q When Mr. Sarno was using the word "quantity" in terms of his questions to you regarding the standard to use in evaluating whether a bookstore was an adult bookstore or not, did you construe those questions to be related to the percentage of material involved?

A As it relates to his questions?

Q Yes.

A Yes, I do.

Q So is it your belief that there is no particular percentage of inventory of a bookstore that would qualify it as an adult bookstore under the Los Angeles Municipal Code?

A To the best of my knowledge, there is no definitive percentage within the L.A. Municipal Code.

Q So it is possible that if a bookstore was, for example, 30 percent adult item-by-item inventory and 70 percent nonadult item-by-item inventory it could be an adult bookstore under the Los Angeles Municipal Code?

A I believe it could.

Q Did you also take into consideration the fact that sexual paraphernalia in a store is included in the definition of an adult bookstore within the Los Angeles Municipal Code when you evaluated Drake's bookstore?

[p. 91] A I did take that into account.

Q Did you believe that a substantial portion of the material in Drake's bookstore, including the published items and the paraphernalia was adult on any of your investigations of the bookstore?

A I did.

Q Would it have mattered how the material was advertised in Drake's in terms of, for example, signage

outside the store or inside the store in your determination that it was an adult bookstore under the Los Angeles Municipal Code?

A That could have played a role.

Q Did it in this case?

A It did not.

MR. MOONEY: I don't have anything further.

FURTHER EXAMINATION

BY MR. SARNO:

Q A series of questions you were just asked regarding your understanding of the application of the adult zoning ordinance, the question that was posed to you was if the percentage of the material was 30 percent adult and 70 percent nonadult, would that necessarily mean that the place is not an adult bookstore.

[p. 92] A Would not necessarily mean that.

Q So even with 30 percent of the material as adult, it could still be an adult bookstore in your determination?

A I believe so, yes.

Q What if there were only 10 percent of the material was adult, could it still be an adult bookstore?

A Yes.

Q What it if were only 1 percent of the location, could it still be an adult bookstore?

A You're asking me to speculate. It's conceivable. Again, every situation is different and should be weighed on its own.

Q Is it fair to say that within the realm of the application of 12.70 you could conceive of circumstances under which a bookstore might possess only 1 percent adult material and still be an adult location under the ordinance?

A That's speculation and not related, I don't think.

Q But you could make the determination with respect to 10 percent?

A I could. And there are situations, I think, that could.

Q How about 5 percent? Is it possible that an [p. 93] adult location could have –

A I'm not going to be able to give you a finite answer, again, because situations are different. The material is different. And I don't think there is a finite answer in this case. There are many scenarios that could occur that could play determining factors in making that decision.

It's conceivable it would probably be a wild circumstance that it could occur under, but, yes, I do believe it is conceivable.

Q That you could have a location with less than 10 percent of adult material, and it could fall within the classification of adult bookstore under the ordinance?

A In my mind, it could.

Q As inspector applying this ordinance?

A I can envision scenarios where it would happen.

Q Could you describe a scenario in which it would happen.

MR. MOONEY: Object at this time as being speculative and not relevant.

BY MR. SARNO:

Q Could you conceive of a scenario in which that would occur?

A I could.

* * *

SELECTED EXCERPTS FROM EXHIBIT "B" TO GARROU DECLARATION CONSISTING OF COVER PAGE AND COURT REPORTER CERTIFICATION PAGE AND RELEVANT INTERIOR PAGES OF THE DEPOSITION TRANSCRIPT OF JAMES CARNEY TAKEN ON JANUARY 26, 1990 IN *TOPANGA PRESS V. THE CITY OF LOS ANGELES*, USDC CD CAL CASE NO. CV-88-7838 RG

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

TOPANGA PRESS, INC., Plaintiff, vs. CITY OF LOS ANGELES, a municipal corporation, etc., et al., Defendants.	)	No. CV 8807838 (Kx)

DEPOSITION OF JAMES CARNEY

Beverly Hills, California
January 26, 1990

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CERTIFIED DEPOSITION NOTARIES
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REPORTED BY: Cheryle Lewis, C.S.R. No. 6312
OUR FILE NO. 5413

* * *

[p. 61] * * *

Q And could you define the element that you would rely upon to arrive at the impression that a location was adult?

MR. MOONEY: Again, just for the record, just a reiteration of the relevance of this inquiry based upon the objections stated before as to standards, as to failure of the complaint to supply a prima facie case of vagueness

or equal protection violation. You may answer the question.

THE WITNESS: Could you repeat that question.

BY MR. SARNO:

Q Let's go back.

I believe that your answer was that in applying the substantial test of 12.70B, the way you were applying it prior to July 8 was basically if upon entering the location the inspector received the impression that it was adult; is that correct?

A That's correct.

Q Were there any criteria that were to be utilized by inspectors as elements in this impression test that was being utilized?

A No.

Q And there was no numerical element in [p. 62] this impression test as to the quantity of material for sale or the quantity of the adult material for sale?

A Well, as far as numerical, it had to be substantial, which meant it had to be more than a few.

Q Obviously if all of the material was adult, then clearly it was adult; right?

A That's correct.

Q And if none of the material was adult, then it was not adult?

A Yes.

Q But somewhere in between those two extremes a location would cease to be non-adult and would become adult; is that correct?

A Yes.

Q And can you give me any indication as to at what point a location would cease to be non-adult and would become adult by virtue of the quantity of the adult material that was contained there?

MR. MOONEY: Well, an additional objection here based on the fact that this is clearly unrelated to the store involved. It involves speculation unrelated to the case, but you can answer the question or maybe you can't, I don't know.

THE WITNESS: All I can say is there's no numerical point that I can name. I can't name you a number [p. 63] as being it. I could foresee that it could be anywhere from 1 percent to 99 percent. It could fall in one or the two categories.

BY MR. SARNO:

Q So it is conceivable in terms of your interpretation of the substantial test that it is conceivable that a location that possessed 2 percent of the total inventory as adult might nevertheless be classified as an adult location under the substantial test; is that correct?

MR. MOONEY: Same objection.

THE WITNESS: It's conceivable, yes. A lot of it depends on the merchandise, what is there, the size of it, everything else.

* * *

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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ALAMEDA BOOKS, INC., a California Corporation; and HIGHLAND BOOKS, INC., a California Corporation, Plaintiffs, v. CITY OF LOS ANGELES, a municipal corporation, Defendant.	Case No. **95-7771 GHK (CTx)** **PLAINTIFF'S REQUEST FOR THE COURT TO TAKE JUDICIAL NOTICE** (Filed Nov. 15, 1995)

Pursuant to this notice, plaintiffs hereby request the Court to take mandatory judicial notice, pursuant to the

provisions of Rule 201(b) and (d) of the Federal Rules of Evidence, of the following documents:

1. The following ordinances passed by the City of Los Angeles:

a. Ordinance No. 151,294 enacted on July 28, 1978 and effective on September 1, 1978 (a true copy of which is attached hereto as Exhibit A).

b. Ordinance No. 155,718 enacted on August 3, 1981 and effective on August 6, 1981 (a true copy of which is attached hereto as Exhibit B).

c. Ordinance No. 156,509 enacted on March 10, 1982 and effective on March 16, 1982 (a true copy of which is attached hereto as Exhibit C).

d. Ordinance No. 157,538 enacted on March 22, 1983 and effective on May 13, 1983 (a true copy of which is attached hereto as Exhibit D).

e. Ordinance No. 155,579 enacted on December 16, 1983 and effective on January 23, 1984 (a true copy of which is attached hereto as Exhibit E).

f. Ordinance No. 161,111 enacted on April 11, 1986 and effective on May 18, 1986 (a true copy of which is attached hereto as Exhibit F).

2. Los Angeles Municipal Code Section 12.70 in its entirety as it currently exists. (A true copy of this section is attached hereto as Exhibit G.)

DATED: November 13, 1995

Respectfully submitted,

G. RANDALL GARROU
JOHN H. WESTON
MELANIE D. LONG
WESTON, SARNO, GARROU
& DeWITT

By /s/ G. R. Garrou
G. RANDALL GARROU

Attorneys for plaintiffs

EXHIBIT "G"

Los Angeles Municipal Code Section 12.70
(Current Version)

SEC. 12.70. ADULT ENTERTAINMENT ZONING.
(Added by Ord. No. 151,294, Eff. 9/1/78.)

A. Purpose. It is the purpose and object of this section to establish reasonable and uniform regulations to prevent the continued concentration of adult entertainment businesses, as defined herein, within the City of Los Angeles.

B. Definitions. For the purpose of this section, certain terms and words are defined as follows:

1. "**Adult Arcade**" – An establishment where, for any form of consideration, one or more motion picture projectors, slide projectors or similar machines, for viewing by five or fewer persons each, are used to show films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by an emphasis upon the depiction or description of "**specified sexual activities**" or "**specified anatomical areas.**"

2. "**Adult Bookstores**" – An establishment which has a substantial portion of its stock-in-trade and offers for sale for any form of consideration any one or more of the following:

(a) Books, magazines, periodicals or other printed matter, or photographs, films, motion pictures, video cassettes, slides or other visual representations which are characterized by an emphasis upon the depiction or description of

"**specified sexual activities**" or "**specified anatomical areas;**" or

(b) instruments, devices or paraphernalia which are designed for use in connection with "**specified sexual activities.**"

3. "**Adult Cabaret**" – A nightclub, bar, restaurant or similar establishment which regularly features live performances which are characterized by the exposure of "**specified anatomical areas**" or by "**specified sexual activities,**" or films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by an emphasis upon the depiction or description of "**specified sexual activities**" or "**specified anatomical areas.**"

4. "**Adult Motel**" – A motel or similar establishment offering public accommodations for any form of consideration which provides patrons with closed circuit television transmissions, films, motion pictures, video cassettes, slides or other photographic reproductions which are characterized by an emphasis upon the depiction or description of "**specified sexual activities**" or "**specified anatomical areas.**"

5. "**Adult Motion Picture Theater**" – An establishment where, for any form of consideration, films, motion pictures, video cassettes, slides or similar reproductions are shown, and in which a substantial portion of the total presentation time is devoted to the showing of material which is characterized by an emphasis upon the depiction or description of "**specified sexual activities**" or "**specified anatomical areas.**"

6. "**Adult Theater**" – A theater concert hall, auditorium or similar establishment which, for any

form of consideration, regularly features live performances which are characterized by the exposure of "**specified anatomical areas**" or by "**specified sexual activities.**"

7. "**Establishment**" (**Amended by Ord. No. 157,538. Eff. 5/13/83.**) – As used in Subsection C hereof, the "**establishment**" of an adult entertainment business shall mean and include any of the following:

(a) The opening or commencement of any such business as a new business;

(b) The conversion of an existing business, whether or not an adult entertainment business, to any of the adult entertainment businesses defined herein; or

(c) The relocation of any such business.

8. "**Massage Parlor**" – An establishment where, for any form of consideration, massage, alcohol rub, fomentation, electric or magnetic treatment, or similar treatment or manipulation of the human body is administered, unless such treatment or manipulation is administered by a medical practitioner, chiropractor, acupuncturist, physical therapist or similar professional person licensed by the State of California. This definition does not include an athletic club, health club, school, gymnasium, state licensed cosmetology or barber establishment, reducing salon, spa or similar establishment where massage or similar manipulation of the human body is offered as an incidental or accessory service. (**Amended by Ord. No. 155,718. Eff. 8/6/81.**)

9. "**Public Park**" – A park, playground, swimming pool, beach, pier, reservoir, golf course or similar athletic field within the City of Los Angeles which is under the control, operation or management of the

City Board of Recreation and Park Commissioners or the County Department of Beaches.

10. "**Religious Institution**" – A building which is used primarily for religious worship and related religious activities.

11. "**School**" – An institution of learning for minors, whether public or private which offers instruction in those courses of study required by the California Education Code or which is maintained pursuant to standards set by the State Board of Education. This definition includes a nursery school, kindergarten, elementary school, junior high school, senior high school or any special institution of learning under the jurisdiction of the State Department of Education, but it does not include a vocational or professional institution or an institution of higher education, including a community or junior college, college or university.

12. "**Sexual Encounter Establishment**" – An establishment, other than a hotel, motel or similar establishment offering public accommodations, which, for any form of consideration, provides a place where two or more persons may congregate, associate or consort in connection with "**specified sexual activities**" or the exposure of "**specified anatomical areas.**" This definition does not include an establishment where a medical practitioner, psychologist, psychiatrist or similar professional person licensed by the State of California engages in sexual therapy.

13. "**Specified Anatomical Areas**" – As used herein, "**specified anatomical areas**" shall mean and include any of the following:

(a) Less than completely and opaquely covered human genitals, pubic region, buttocks,

anus or female breasts below a point immediately above the top of the areolas; or

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

14. "**Specified Sexual Activities**" – As used herein, "**specified sexual activities**" shall mean and include any of the following:

(a) The fondling or other erotic touching of human genitals, pubic region, buttocks, anus or female breasts;

(b) Sex acts, normal or perverted, actual or simulated, including intercourse, oral copulation or sodomy;

(c) Masturbation, actual or simulated; or

(d) Excretory functions as part of or in connection with any of the activities set forth in (a) through (c) above.

15. "**Substantial Enlargement**" – As used in Subsection C hereof, the "**substantial enlargement**" of an adult entertainment business shall mean the increase in floor area occupied by the business by more than fifty percent (50%), as such floor area exists on the effective date of this section.

16. "**Transfer of Ownership or control**" – As used in Subsections C and E hereof, the "transfer of ownership or control" of an adult entertainment business shall mean and include any of the following:

(a) The sale, lease or sublease of such business;

(b) The transfer of securities which constitute a controlling interest in such business, whether by sale, exchange or similar means; or

(c) The establishment of a trust, gift or other similar legal device which transfers the ownership or control of such business, except for transfer by bequest or other operation of law upon the death of the person possessing such ownership or control.

17. "**Adult Entertainment Business**" – Adult Arcade, Adult Bookstore, Adult Cabaret, Adult Motel, Adult Motion Picture Theatre, Adult Theatre, Massage Parlor, or Sexual Encounter Establishment, as defined herein, and each shall constitute a separate adult entertainment business even if operated in conjunction with another adult entertainment business at the same establishment. (**Added by Ord. No. 157,538, Eff. 5/13/83.**)

C. Prohibition. (Amended by Ord. No. 158,579, Eff. 1/23/84.) No person shall cause or permit the establishment, substantial enlargement or transfer of ownership or control of an adult entertainment business within 1,000 feet of another adult entertainment business, or within 500 feet of a religious institution, school, or public park within the City of Los Angeles. No person shall cause or permit the establishment or maintenance of more than one adult entertainment business in the same building, structure or portion thereof, or the increase of floor area of any adult entertainment business in any building, structure or portion thereof containing another adult entertainment business.

No person shall cause or permit the establishment, or substantial enlargement of an adult entertainment business within 500 feet of any lot in an "A" or "R" zone, or within the "CR", "C1", or "C1.5" zones in the City of Los Angeles.

After March 6, 1988, no person shall cause or permit the continued operation, maintenance, or use of a lot, building or structure, or any portion thereof as an Adult Arcade, Adult Bookstore, Adult Cabaret, Adult Motel, Adult Motion Picture Theater, Adult Theater, Massage Parlor or Sexual Encounter Establishment, within 500 feet of any lot in an "A" zone or "R" zone, or within the "CR", "C1" or "C1.5" zones in the City of Los Angeles. (**Added by Ord. No. 161,111, Eff. 5/18/86.**)

D. Measurement Of Distance. The distance between any two adult entertainment businesses shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of each business. The distance between any adult entertainment business and any religious institution, school or public park shall be measured in a straight line, without regard to intervening structures, from the closest exterior structural wall of the adult entertainment business to the closest property line of the religious institution, school or public park.

E. Exceptions.

1. A person possessing ownership or control of an adult entertainment business which is within 1,000 feet of another such business or within 500 feet of any religious institution, school or public park on the effective date of this ordinance shall be permitted to transfer such ownership or control within two (2) years of said effective date. The person acquiring such ownership or control, however, shall be required to discontinue said adult entertainment business within five (5) years from the date of said transfer of ownership or control, if such business continues to be within 1,000 feet of another such

business or within 500 feet of any religious institution, school or public park.

2. A person possessing ownership or control of an adult entertainment business shall be permitted to transfer such ownership or control if such business is not within 500 feet of any religious institution, school or public park and the only other adult entertainment business or businesses within 1,000 feet of such business have been established under a variance from the requirements of this section, pursuant to the variance provisions set forth in Section 12.27 of this Code. This exception shall not, however, apply to an adult entertainment business which has been established under such a variance.

3. Except for an adult entertainment business required to be discontinued pursuant to Subdivision 1 of this subsection, if more than one adult entertainment businesses exists in the same building, structure or portion thereof, then all may be continued until March 10, 1985. At that time all shall be discontinued except those established prior to September 1, 1978; but if none of the adult entertainment businesses were established prior to September 1, 1978, then all shall be discontinued except for one, and in case of a dispute the adult entertainment business established first shall have the priority right to continue.

4. An adult entertainment business may be continued, or established and maintained, pursuant to Section 12.22A20. **(Amended by Ord. No. 161,111, Eff. 5/18/86.)**

F. Severability. If any If any provision or clause of this section or the application thereof to any person or circumstance is held to be unconstitutional or otherwise invalid by any court of competent jurisdiction, such

invalidity shall not affect other section provisions, clauses or applications thereof which can be implemented without the invalid provision, clause or application thereof, and to this end the provisions and clauses of this section are declared to be severable.

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UNITED STATES DISTRICT COURT

FOR THE CENTRAL DISTRICT OF CALIFORNIA

ALAMEDA BOOKS, INC., a California Corporation; *et al.*, plaintiffs, v. CITY OF LOS ANGELES, a municipal corporation, defendant.	Case No. CV 95-7771 DDP (CTx) **PLAINTIFFS' FOURTH REQUEST FOR THE COURT TO TAKE JUDICIAL NOTICE** Hearing: Date: August 25, 1997 Time: 10:00 a.m. Ctrm: 24 (Filed Jul. 1, 1997)

Pursuant to this notice, plaintiffs hereby request the Court to take mandatory judicial notice, pursuant to the provisions of Rule 201(b) and (d) of the Federal Rules of Evidence, of the following documents filed in the following cases:

Steven A. Diamond and Diamond Video World, Inc. v. City of Los Angeles, C.D. Cal. No. CV-95-1534 AWT

1. Complaint for Injunctive and Declaratory Relief filed on or about March 13, 1995 (a true copy of which is attached hereto as Exhibit "A").

2. Order on Motion for Preliminary Injunction filed on or about June 9, 1995 (a true copy of which is attached hereto as Exhibit "B").

3. Preliminary Injunction filed on or about June 9, 1995 (a true copy of which is attached hereto as Exhibit "C").

4. Stipulation for Entry of Judgment and Order Thereon filed on or about November 6, 1995 (a true copy of which is attached hereto as Exhibit "D").

5. Permanent Injunction filed on or about November 6, 1995 (a true copy of which is attached hereto as Exhibit "E").

E.W.A.P., Inc. v. City of Los Angeles, C.D. Cal. No. 95-1711 AWT

1. Complaint for Injunctive and Declaratory Relief and Damages filed on or about March 17, 1995 (a true copy of which is attached hereto as Exhibit "F").

2. Declarations of David M. Brown (together with Exhibits "A" & "B"); John R. DeMott; Lynn Swanson; Jeff Johnson; Jeffrey J. Douglas and Appendix "A" filed on or about March 31, 1995 (a true copy of which is attached hereto as Exhibit "G").

3. Order on Motion for Preliminary Injunction filed on or about June 9, 1995 (a true copy of which is attached hereto as Exhibit "H").

4. Preliminary Injunction filed on or about June 9, 1995 (a true copy of which is attached hereto as Exhibit "I").

5. Stipulation for Entry of Judgment and Order Thereon filed on or about October 12, 1995 (a true copy of which is attached hereto as Exhibit "J").

6. Permanent Injunction filed on or about October 12, 1995 (a true copy of which is attached hereto as Exhibit "K").

New Wave, Inc., et al. v. City of Los Angeles, C.D. Cal. No. CV 91-0689 WDK (Ex)

1. First Amended Complaint for Declaratory and Injunctive Relief Under 42 U.S.C. § 1983 filed on or about February 11, 1991 (a true copy of which is attached hereto as Exhibit "L").

Topanga Press, Inc., et al. v. City of Los Angeles, C.D. Cal. No. CV 88-7838 RG

1. Stipulation and Order Consolidating Cases Under Low Case Number filed on or about February 13, 1991 (a true copy of which is attached hereto as Exhibit "M").

2. Declaration of Steve Wiener in Support of Motions for Preliminary Injunction by Hardrock, Inc., Whitey, Inc. and Beverly Books, Inc. filed on or about February 19, 1991 (a true copy of which is attached hereto as Exhibit "N").

3. Preliminary Injunction filed on June 22, 1991 and entered on September 30, 1992 *nunc pro tunc* (a true copy of which is attached hereto as Exhibit "O").

4. Stipulated Order for Permanent Injunction filed on or about February 24, 1995 (a true copy of which is attached hereto as Exhibit "P").

5. Stipulated Order of Judgment filed on or about March 1, 1995 (a true copy of which is attached hereto as Exhibit "Q").

We also request the Court to take judicial notice of Los Angeles Municipal Code § 103.101, "Picture Arcade" (a true copy of which is attached hereto as Exhibit "R").

Finally, we request the Court to take judicial notice of the district court docket sheets in *Diamond v. City of Los Angeles*, C.D. Cal. No. CV-95-1534 AWT and *E.W.A.P., Inc. v. City of Los Angeles*, C.D. Cal. No. 95-1711 AWT (true copies of which are attached hereto as Exhibit "S" and Exhibit "T" respectively).

DATED: June 30, 1997

Respectfully submitted,

G. RANDALL GARROU
MELANIE D. LONG
WESTON, GARROU & DeWITT

By /s/ G. Randall Garrou
G. RANDALL GARROU

Attorneys for plaintiff

EXHIBIT "R"

LOS ANGELES MUNICIPAL CODE § 103.101, "PICTURE ARCADE"

DIVISION 7

SEC. 103.101. PICTURE ARCADE.

(a) **Picture Arcade Defined.** As used in this article, "picture arcade" shall mean any place to which the public is admitted wherein one or more coin or slug-operated, or electrically, electronically or mechanically controlled still or motion picture machines or projectors are maintained to show still or motion pictures to five or fewer persons per machines at any one time. **(Amended by Ord. No. 150,184, Eff. 11/7/77.)**

(b) **Permit Required. (Amended by Ord. No. 150,184, Eff. 11/7/77.)** No person shall operate, maintain, manage or conduct a picture arcade without a written permit from the Board.

The provisions of this section shall govern the power of the Board to issue, deny, suspend or revoke a permit, or to impose conditions on the retention of a permit in connection with the picture arcade business, notwithstanding the provisions of Sections 103.29 and 103.31 of this Code.

EXCEPTION:

No permit shall be required under this section if the person engaged in the operation of the arcade has a valid carnival permit issued under the provisions of Division 7 of Chapter 10 of this Code and an arcade is therein permitted.

(c) **Issuance of Permit. (Amended by Ord. No. 150,184, Eff. 11/7/77.)** After an investigation the Board shall issue a permit if it finds:

(1) That the business for which a permit is required, herein, be carried on in a building, structure and location which complies with the requirements and meets the standards of the health, zoning, fire and safety laws of the State of California and ordinances of the City of Los Angeles applicable thereto, and the requirements of Subsections (i) and (j) hereof;

(2) That the applicant, his or her employee, agent, partner, director, officer, stockholder, or manager has not knowingly made any false, misleading or fraudulent statement of material fact in the application for permit, or in any report or record required to be filed with the Board;

(3) That the applicant has not had a picture arcade or arcade permit revoked by the Board within two years of the date of the application;

(4) That on the date that the business for which a permit is required herein commences, and thereafter, there will be a responsible person on the premises to act as manager at all times during which the business is open. **(Amended by Ord. No. 155,715, Eff. 9/12/81.)**

(5) (None)

(d) **Decision of the Board.** The decision of the Board regarding a permit application shall be issued within 30 days of the date of the filing of the application unless the Board has set the matter for hearing. Such hearing must be held and decision rendered within 50 days from the date of the application unless the matter is

continued at the request of the applicant. No application for a permit shall be denied without giving the applicant an opportunity for a hearing. **(Amended by Ord. No. 150,184, Eff. 11/7/77.)**

(e) **Suspension or Revocation of Permit. (Amended by Ord. No. 150,184, Eff. 11/7/77.)** After an investigation, notice and hearing, the Board shall suspend or revoke an existing permit, or impose such conditions upon the retention of the permit as shall be found to be necessary to assure the preservation of the public health and safety, if the evidence presented establishes that one or more of the following conditions exist:

(1) The building, structure, equipment, location or manner of operation of such business does not comply with the requirements of or fails to meet the standards of the health, zoning, fire and safety laws of the State of California and ordinances of the City of Los Angeles applicable thereto, and the requirements of Subsections (i) and (j) hereof. **(Amended by Ord. No. 162,946, Eff. 12/19/87.)**

(2) The permittee, his or her employee, agent, partner, director, officer, stockholder or manager has knowingly allowed or permitted any act of sexual intercourse, sodomy, oral copulation, or masturbation, to be committed in this subject picture arcade, or has knowingly permitted or allowed the subject picture arcade to be used as a place in which solicitations for sexual intercourse, sodomy, oral copulation, or masturbation openly occur.

(3) The permittee, his or her employee, agent, partner, director, officer, stockholder or manager has knowingly made any false, misleading or fraudulent statements of material fact in the application for permit, or in any report or record required to be filed

with the Board pertaining to the permit for the subject picture arcade, or has violated any rule or regulation duly adopted by the Board relating to the permit or the subject picture arcade.

(4) There has not been a responsible person on the premises to act as manager at all times during which the business was open.

(f) **Board Rules and Regulation**. The Board shall promulgate rules and regulations for the conduct of hearings for the denial or revocation of picture arcade permits which shall provide for notice of hearing and charges, the right to counsel, the right to present relevant evidence, and for the making of written findings of fact. **(Amended by Ord. No. 150,184, Eff. 11/7/77.)**

(g) **Hours of Operation**. Each picture arcade must remain closed between the hours of 2:00 A.M. and 9:00 A.M., and all customers, patrons, and visitors must be excluded therefrom between those hours. Where only one coin-operated still or motion picture machine, projector or similar contrivance is maintained and such device is not the primary business, then, if that device remains inoperative between the hours of 2:00 A.M. and 9:00 A.M., customers, patrons and visitors need not be excluded from the premises. **(Amended by Ord. No. 150,184, Eff. 11/7/77.)**

(h) **Persons Under 16. (Amended by Ord. No. 150,184, Eff. 11/7/77.)** No person under 16 years of age shall be permitted to enter or remain in a picture arcade between the hours of 10:00 P.M. and 9:00 A.M. unless:

(1) Such person is accompanied by such person's parent or guardian; or

(2) Such number of readily identifiable State licensed security guards or private security guards, as required by order of the Board of Police Commissioners, are on duty in and about the picture arcade.

(i) **Visibility of Interior.** The permittee shall not maintain any picture arcade unless the entire interior of such premises wherein the pictures are viewed is visible upon entrance to such premises. No partially or fully enclosed booths or partially or fully concealed booths shall be maintained. **(Amended by Ord. No. 150,184, Eff. 11/7/77.)**

(j) **Lighting.** A level of illumination shall be maintained in all parts of the premises which are open to the public during hours of operation in accordance with rules and regulations established by the Board. **(Amended by Ord. No. 150,184, Eff. 11/7/77.)**

* * *

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Attorneys for Defendant
CITY OF LOS ANGELES

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

ALAMEDA BOOKS, INC., A California Plaintiffs, vs. CITY OF LOS ANGELES, a municipal corporation, Defendant.	CASE NO. CV 95-7771 KMW (CTx) RESPONSES OF DEFENDANT CITY OF LOS ANGELES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSIONS

PROPOUNDING PARTY:
Plaintiffs Alameda Books, Inc. and Highland Books, Inc.

RESPONDING PARTY:
Defendant City of Los Angeles

SET NO.: One

Defendant CITY OF LOS ANGELES hereby responds to Plaintiffs' First Set of Request for Admissions by providing the following responses and by making the objections indicated.

* * *

REQUEST FOR ADMISSION NO. 25:

Admit or deny that you are unaware of any businesses qualifying as an "adult arcade" as defined in L.A.M.C. § 12.70 B which are not operating within a store which also constitutes an "adult bookstore" as that term is defined in that same code section.

RESPONSE TO NO. 25:

The Defendant objects to the Request on the basis that it is irrelevant, unduly burdensome, and that the information requested is not likely to lead to the discovery of admissible evidence. Further, this interrogatory would require a search of public records, a survey of buildings, and a classification of their uses which would unduly burden the City and which plaintiffs are just as able to perform as the City. Without waiving these objections, Defendant responds as follows.

Upon reasonable inquiry, the Defendant does not have sufficient information to respond to Request No. 25.

* * *

REQUEST FOR ADMISSION NO. 43:

Admit or deny that there are no "adult arcades" known to you to be currently operating in Los Angeles that do not also sell or rent videotapes and/or books and novelties.

RESPONSE TO NO. 43:

The Defendant objects to the Request on the basis that it is irrelevant, unduly burdensome, and that the information requested is not likely to lead to the discovery of admissible evidence. Further, this interrogatory would require a search of public records, a survey of buildings, and a classification of their uses which would unduly burden the City and which plaintiffs are just as able to perform as the City. Without waiving these objections, Defendant responds as follows.

Upon reasonable inquiry, the Defendant does not have sufficient information to respond to Request No. 43.

* * *

Dated: July 22, 1996

Submitted,

JAMES K. HAHN, City Attorney
CLAUDIA MCGEE HENRY,
Senior Assistant
City Attorney
SHARON SIEDORF CARDENAS
Assistant City Attorney
P. NELSON KING
Deputy City Attorney

By /s/ Sharon Siedorf Cardenas
SHARON SIEDORF CARDENAS
Assistant City Attorney

Attorneys for Defendant
CITY OF LOS ANGELES

VERIFICATION

I, SHARON SIEDORF CARDENAS, declare:

I am an Attorney at Law, duly licensed to practice my profession in the State of California. I am a Assistant City Attorney employed in the Office of the City Attorney of the City of Los Angeles and one of the attorneys assigned to represent the City of Los Angeles in the within action. My business address is 1700 City Hall East, 200 North Main Street, Los Angles, California 90012.

I prepared the foregoing RESPONSES OF DEFENDANT CITY OF LOS ANGELES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSIONS based upon information provided to me by various employees of the City of Los Angeles and others concerned with the subject mater of the within action. I am informed and believe the matters therein to be true and on that ground allege that said matters are true.

I am an agent of the City of Los Angeles and am authorized to verify the foregoing on behalf of the City of Los Angeles.

I declare under penalty of perjury that the foregoing is true and correct. Executed on July 22, 1996 at Los Angeles, California.

/s/ Sharon Siedorf Cardenas
SHARON SIEDORF CARDENAS

PROOF OF SERVICE BY MAIL

I, the undersigned, say:

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and not a party to the within action or proceeding. My business address is 1700 City Hall East, 200 North Main Street, Los Angeles, California 90012.

On July 22, 1996 I served the within:

RESPONSES OF DEFENDANT CITY OF LOS ANGELES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR ADMISSIONS

the person(s) indicated below, by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid and addressed as follows:

G. Randall Garrou
Weston, Sarno, Garrou & DeWitt
433 North Camden Drive, Suite 900
Beverly Hills, California 90210

On deposited such envelope(s) in the mail at Los Angeles, California. I am "readily familiar" with the office's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on July 22, 1996 at Los Angeles, California.

/s/ Felicia Frericks
FELICIA FRERICKS